



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 22, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0391

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	Not Sustained - Unfounded (Expedited)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that Named Employee #1 (NE#1) may have made false statements on his police report regarding an incident that he responded to involving the Complainant. It was further alleged that during NE#1's interaction with the Complainant, NE#1 was intimidating toward the Complainant and may have issued the Complainant a citation due to the Complainant's professed appearance as "indigent."

ADMINISTRATIVE NOTE:

During its Intake Investigation, OPA identified one allegation that it returned to the Chain of Command to be handled via a Supervisor Action. OPA determined that NE#1 may have made statements that were sarcastic, curt, and, in some respects, counterproductive. This matter was directed to NE#1's Chain of Command to address through training, communication, or coaching by the employee's supervisor(s).

The remaining allegations in this case were designated for Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.

SUMMARY OF INVESTIGATION:

All relevant portions of the interaction between the NE#1 and the Complainant were captured by Body Worn Video (BWV). Accordingly, the relevant facts are not in credible dispute.

On December 3, 2019, NE#1 and Witness Employee #1 (WE#1) were engaging in a routine patrol when they encountered the Complainant. The officers walked up to the Complainant, at which point in time NE#1 advised the Complainant that he was being detained for Criminal Trespass, as the Complainant had been seen walking out of a



fenced-in property. Although the Complainant acknowledged that he had been within the fenced-in property, he noted that the fence had a large gap in it, making the fencing an ineffective means of keeping out pedestrians. The Complainant went on to comment that he believed NE#1 to be profiling him, as the Complainant had seen other individuals within the fenced area who were not stopped by NE#1. Due to the Complainant's expressed concerns regarding profiling, NE#1 called a supervisor to the scene, who screened the issue with the Complainant. Subsequent to the incident, NE#1 drafted an Incident/Offense Report regarding the stop, wherein NE#1 stated that the basis of the stop was Criminal Trespass in the Second Degree. NE#1 noted that he "observed a male [the Complainant] exit a fenced off property through a hole in the fence. [NE#1] knew the building was abandoned, had been completely fenced off with chain link fencing to prevent people from entering, and had recently been broken into and wiring stripped out of the walls and ceiling." After investigating the scene, NE#1 requested a Charge By Officer (CBO) against the Complainant for Trespass.

After receiving the complaint upon which this investigation is premised, OPA reached out to the Complainant and took his statement. The Complainant expressed three principal concerns regarding his interaction with NE#1. First, the Complainant alleged that NE#1 had detained him due to profiling, given that he "looked indigent at the time" and "was a lower-class citizen." Second, the Complainant alleged that NE#1 failed to accurately document how he first saw the Complainant, stating that NE#1 described the Complainant as crawling through a hole in the fence, but that the hole was actually a large gap in the fence. Lastly, it was alleged that NE#1 spoke to the Complainant in a demeaning manner. The first two allegations are addressed below. The third allegation was processed as a Supervisor Action.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

The Complainant alleged that NE#1 engaged in bias-policing.

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140-POL.) This includes different treatment based on the race of the subject. (See id.)

In this case, the Complainant was detained by NE#1 after NE#1 observed the Complainant exiting a fenced-off area. Although the Complainant contests the size of the fence opening from which he emerged, it is uncontested that the Complainant had been in a fenced-off area. While the Complainant claims that he was "indigent" in appearance at the time of the detention, OPA found no evidence whatsoever that this outward appearance impacted NE#1's decision to detain the Complainant for trespass.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded (Expedited)**



Named Employee #1 - Allegation #2

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

The Complainant alleged that NE#1 failed to accurately document his investigation on a report.

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. Even where victims of crime refuse to cooperate and to give a statement, officers are still required to document that fact in a report. (SPD Policy 15.180-POL-5.) Lastly, the Department's expectation, which has been clearly conveyed to officers, is that this report will be completed prior to the end of their shift on the date of the incident.

In his complaint, the Complainant alleged that NE#1's report was inaccurate by stating that the Complainant was seen crawling through a hole in the fence. However, in reviewing NE#1's report, OPA determined that NE#1 wrote that the Complainant had "exited a fenced off property through a hole in the fence." The Complainant did not contest that he was within the fenced off area, and BWV showed a chain-link fence in the area of the detention. Although the Complainant may have disagreed with the use of the word "hole" in this situation, it was not an incorrect or inaccurate—let alone, purposefully untruthful—word to use in this context. Considering the discrepancy between the Complainant's account of NE#1's report and the actual content of the report, as well as the correspondence between NE#1's report and the circumstances depicted on BWV, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded (Expedited)**